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The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROE-KWAN KIM

Appeal No. 2002-1006
Application 09/132,351

ON BRIEF

Before BARRETT, FLEMING, and LEVY, **Administrative Patent Judges.**

FLEMING, **Administrative Patent Judge.**

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1 through 10, 13 and 14. Claims 11 and 12 are objected to as being dependent upon a rejected base claim.

Invention

The present invention relates to transmitting short messages in a mobile communication system to a plurality of called

subscribers in a GSM (Global System for Mobile Communication) system. See page 1 of Appellant's specification. Referring to Appellant's figures 3a and 3b, a flow diagram illustrates a method for transmitting a short message by a GSM terminal to a GSM system. If the short message transmission mode is selected, the controller 1 causes display unit 4 to instruct the calling subscriber to input a service center address which is a short message service center number (step 305). If the short message group registration mode is selected, the controller 1 performs a short message group registration mode routine (step 318). See page 8 of Appellant's specification.

If the group transmission mode is selected, the calling subscriber is instructed to input a group identifier to which the short message is transmitted (step 309). If the group identifier is inputted, the caller subscriber is then instructed to input a short message (step 312). If the transmit key is selected, the controller 1 transmits the stored short message service center address, group identifier and short message. See page 9 of Appellant's specification.

Referring now to figure 4, a flow diagram illustrates the short message group registration mode routine (step 318 in fig. 3A). If the short message group registration mode is selected

among, the displayed sub-menus the controller 1 enters the short message group registration mode routine. The calling subscriber is then instructed to input a short message service center address (step 401). If the service center address is inputted, the subscriber is then instructed to input a group identifier (step 404). The calling subscriber is then instructed to input a destination address (step 407). The controller 1 then determines if a destination address end key is selected (step 410). If it is not selected, the calling subscriber is instructed to input another destination address. In this manner, the calling subscriber can input a plurality of destination addresses. If the transmit key is selected, the controller 1 will transmit the short message group registration information to the short message service center 180. See pages 10 and 11 of Appellant's specification.

Referring now to Appellant's figure 7, a block diagram illustrates the short message service center. A gateway circuit 740 detects either the short message information or the short message group registration information. See page 12 of Appellant's specification. If the short message signal includes the short message group registration information, the controller 710 will execute a short message group registration mode routine

(step 510) shown in Appellant's figure 6. See page 13 of Appellant's specification. If the short message signal received by the short message service center includes a short message group registration information, the controller 710 will execute a short message group registration mode routine. In Appellant's figure 6, the controller 710 stores the called subscriber numbers in corresponding addresses that are associated with and/or assigned to the group identifier (step 603). See page 14 of Appellant's specification.

Claim 1 is representative of the claimed invention and is reproduced as follows:

1. A method for transmitting a short message to a plurality of subscribers in a mobile communication system, comprising the steps of:

registering a plurality of called subscriber numbers in a short message service center of said mobile communication system by associating each of said plurality of called subscriber numbers with a group identifier, the group identifier being a separately defined field; and

simultaneously transmitting said short message to each of said plurality of called subscriber numbers by designating said group identifier.

References

The references relied on by the Examiner are as follows:

Alanara et al. (Alanara)	5,878,351	Mar. 2, 1999 (Filing date Nov. 7, 1996)
Huotari	5,987,323	Nov. 16, 1999 (Filing date Apr. 1, 1997)
Sanders, III et al. (Sanders)	6,026,296	Feb. 15, 2000 (Filing date April 30, 1997)

Rejections at Issue

Claims 1 and 9 stand rejected 35 U.S.C. § 102 as being anticipated by Sanders. Claim 10 stands rejected under 35 U.S.C. § 103 as being unpatentable over Sanders. Claims 2 through 4, 6 through 8, 13 and 14 stand rejected under 35 U.S.C. § 103 as being unpatentable over Sanders and Huotari. Claim 5 stands rejected under 35 U.S.C. § 103 as being unpatentable over Sanders and Alanara.

Throughout our opinion, we make references to the briefs[1] and the answer.[2]

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[1] Appellant filed an appeal brief on May 25, 2001. Appellant filed a reply brief on October 17, 2001. The Examiner mailed out an office communication on December 26, 2001, stating that the reply brief has been entered. Appellant filed a reply brief on August 26, 2002 which is identical to the previously filed reply brief.

[2] The Examiner mailed an Examiner's answer on August 13, 2001. On June 19, 2002, the Examiner had a telephonic interview with Appellant's representatives. The interview summary states

(continued...)

Opinion

With full consideration being given to the subject matter on appeal, the Examiner's rejections and the arguments of the Appellant and the Examiner, for the reasons stated **infra**, we affirm the Examiner's rejection of claims 1 and 9 under 35 U.S.C. § 102 and we affirm the Examiner's rejection of claims 2 through 8, 13 and 14 under 35 U.S.C. § 103.

We first will address the rejection of claims 1 and 9 under 35 U.S.C. § 102. At the outset, we note that Appellant states on page 4 of the brief that claims 2 through 10, 13 and 14 stand or fall together with claim 1. We note that Appellant has only argued claim 1. See pages 4 through 7 of the brief and the reply brief. 37 CFR § 1.192 (c)(7) (July 1, 2000) **as amended at** 62 Fed. Reg. 53169 (October 10, 1997), which was controlling at the time of Appellant's filing the brief, states:

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[2](...continued)
that a supplemental answer is attached to the interview summary, which includes Huotari and Alanara references under the heading of Prior Art of Record, in paragraph 9. The interview summary states that these references were inadvertently left out in the previous Examiner's answer mailed August 13, 2001. We note that the record also shows the supplemental Examiner's answer entered into the record and mailed on June 19, 2002. We will simply refer to the supplemental Examiner's answer as the answer.

> For each ground of rejection which [A]ppellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and, in the argument under paragraph (c)(8) of this section, [A]ppellant explains why the claims of the group are believed to be separately patentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable.

Furthermore, note that claims 1 and 9 are rejected under 35 U.S.C. § 102. We will, thereby, consider the Appellant's claims 1 and 9 as standing or falling together and we will treat claim 1 as a representative claim of that group. **See also In re McDaniel**, 293 F.3d 1379, 1383, 63 USPQ2d 1462, 1465 (Fed. Cir. 2002) ("If the brief fails to meet either requirement [of 37 CFR § 1.192 (c)(7)], the Board is free to select a single claim from each group of claims subject to a common ground of rejection as representative of all claims in that group and to decide the appeal of that rejection based solely on the selected representative claim.")

Appellant argues in the brief and the reply brief that Sanders fails to teach a "group identifier" that is a "separately defined field" as recited in Appellant's claim 1. Appellant argues that Sanders teaches directing messages to a single pre-defined dispatch group based on either the originating device ID

or the target address. Appellant argues that as a result, Sanders' device does not accommodate directing a single short message to different groups of called subscriber numbers by designating different group identifiers. See page 5 of Appellant's brief.

It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim. **See In re King**, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986) and **Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.**, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984).

As pointed out by our reviewing court, we must first determine the scope of the claim. "[T]he name of the game is the claim." **In re Hiniker Co.**, 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998). "In examining a patent claim, the PTO must apply the broadest reasonable meaning to the claim language, taking into account any definitions presented in the specification." **In re Bass**, 314 F.3d 575, 577, 65 USPQ2d 1156, 1158 (Fed. Cir. 2002). Citing **In re Yamamoto**, 740 F.2d 1569, 1571, 222 USPQ 934, 936 (Fed. Cir. 1984). Words in a claim are to be given their ordinary and accustomed meanings unless the

inventor chooses to be his own lexicographer in the specification. **In re Bass**, 314 F.3d at 577, 65 USPQ2d at 1158, citing **Lantech, Inc. v. Keip Mach. Co.**, 32 F.3d 542, 547, 31 USPQ2d 1666, 1670 (Fed. Cir. 1994).

We note that Appellant's claim 1 recites a

> method for transmitting a short message to a plurality of subscribers in a mobile communication system, comprising the steps of: registering a plurality of called subscriber numbers in a short message service center of said mobile communication system by associating each of said plurality of called subscriber numbers with a group identifier, the group identifier being a separately defined field.

We note that this step is directed to registering a plurality of called subscriber numbers. Thus, this step is an attempt to recover the short message group registration mode disclosed in Appellant's specification. Furthermore, the language requires registering a plurality of subscriber numbers by associating each of the plurality of subscriber numbers with a group identifier. Thus, the language requires that a plurality of subscriber numbers are associated with a group identifier. The step further sets forth that the group identifier be a separately defined field. However, the claim does not specify from what the group identifier is being separately defined. A broad reading of the claim, simply requires that the group identifier is simply a different number than the plurality of called subscriber numbers.

Finally, Appellant's claim 1 recites the additional step of "simultaneously transmitting said short message to each of said plurality of called subscriber numbers by designating said group identifier." We note that the claim does not require a plurality of group identifiers but only requires one. Furthermore, we note that the group identifier only needs to point to one group of a plurality of subscriber numbers. Thus, with this scope of Appellant's claim 1 in mind, we turn to Appellant's argument.

Appellant argues that Sanders does not accommodate directing a short message to different groups of called subscriber numbers by designating different group identifiers. As pointed out above, Appellant's claim 1 does not require different groups of subscriber numbers and does not require more than one group identifier. Thus, Appellant's claimed method simply requires that there is only one group of subscriber numbers in which a single identifier is associated.

We find that Sanders does teach registering a plurality of called subscriber numbers in a short message service center of said mobile communication by associating each of the plurality of subscriber numbers with a group identifier, the group identifier being a separately defined field. In particular, Sanders teaches

in column 10, lines 17 through 40, that figure 6 illustrates a flow diagram of the steps executed by a communication device and a dispatch short message service communication. The project flow begins (601) when the communication device transmits (603) an SMS call request together with a short message to a dispatch controller located logically, and preferably physically, external to the existing network. The SMS call request includes an ID of the communication device and an address of the dispatch controller. As described above, the dispatch controller utilizes the communication device ID or the target address of the dispatch controller contained in the SMS call request to determine the communication network talk group and the associated talk group members. Thus, either the ID of the communication device or the address of the dispatch controller reads on Appellant's claimed group identifier. The communication device ID or a target address is associated with a plurality of subscriber numbers, associated talk group members. This is further buttressed by Sanders' teaching in column 10, lines 42 through 52, which states that cellular telephone users can engage in dispatch or group calls, or send short messages to a group of target users, with a simple press of a button or a combination of buttons on their telephone.

Sanders also teaches in column 7, lines 4 through 21, that the present invention facilitates dispatch or group short message service. Upon receiving a call request and a short message, the MSC 118 provides a call request and short message to the SMS processor 120. The SMS processor 120 forwards the call request and short message to dispatch controller 103, which, in turn, establishes communication links between itself and target devices 107 through 110 of the originating communication talk group as described above. Once the links are established, the dispatch controller transmits the short message to target devices 107 through 110 via the SMS processor 120 and establishes the links 126 through 127, 129 through 130. Thus, we find that Sanders teaches simultaneously transmitting said short message to each of the plurality of called subscriber numbers by designating said group identifier, as recited in Appellant's claim 1. Therefore, we have found that Sanders teaches all of the claimed elements recited in Appellant's claim 1.

Appellant further argues that the Examiner's reasoning that the ID of the communication device reads on the group identifier defies logic. Appellant argues that the ID of the communication device is a characteristic of the communication device itself, and that Sanders device is limited to a single pre-defined

dispatch group. Appellant argues that by contrast by using "a separately defined field" as a "group identifier" in claim 1, multiple groups may be designated using different groups identifiers.

We fail to find that Appellant's claimed language "a separately defined field" as a "group identifier" precludes the Examiner from reading the ID of the Sanders communication device on Appellant's claimed group identifier. As pointed out above, Appellant's claim does not require multiple groups being designated using different group identifiers. Appellant's claim broadly read only requires one group of plurality of subscriber numbers, and one group identifier associated with that group of subscriber numbers. Furthermore, the claim requires that the group identifier be a separately defined field. As pointed out above, the group identifier being required to be a separately defined field simply requires the group identifier to be a separate number from the plurality of called subscriber numbers. Furthermore, we fail to find anything in the Appellant's specification that has a special definition for the term "separately defined field." Therefore, we find that the Examiner did not err in using the ordinary common usage of the term which

is broad enough to require that the group identifier just be simply a different number than the plurality of subscriber numbers.

In view of the foregoing, we will sustain the Examiner's rejection of claims 1 and 9 under 35 U.S.C. § 102 as being anticipated by Sanders.

We now turn to the rejection of the remaining claims under 35 U.S.C. § 103. We note that the Appellant has not made an argument as to the rejection under 35 U.S.C. § 103 in the brief or the reply brief. The Appellant has stated on page 4 and page 7 of the brief that claims 2 through 8, 10, 13 and 14 stand or fall with claim 1. Appellant further states in footnote 4 found on page 7 of the brief that independent claim 2 rejected under 35 U.S.C. § 103 includes analogous recitation to the aspects of claim 1 described above and may be distinguished from Sanders and thus the cited combination in a like manner.

37 CFR § 1.192 (a) states:

> Appellant must, within two months from the date of the notice of appeal under § 1.191 or within the time allowed for reply to the action from which the appeal was taken, if such time is later, file a brief in triplicate. The brief must be accompanied by the fee set forth in § 1.17 (c) and must set forth the authorities and arguments on which [A]ppellant will rely to maintain the appeal. Any arguments

> or authorities not included in the brief will be refused consideration by the Board of Patent Appeals and Interferences, unless good cause is shown.

Thus, 37 CFR § 1.192 provides that only the arguments made by Appellants in the brief will be considered and that failure to make an argument constitutes a waiver on that particular point. Support for this rule has been demonstrated by our reviewing court in **In re Berger**, 279 F.3d 975, 984, 61 USPQ2d 1523, 1528-29 (Fed. Cir. 2002), wherein the Federal Circuit Court stated that because the Appellant did not contest the merits of the rejections in his brief to the Federal Circuit Court, the issue is waived.

Having addressed all the arguments, we therefore will sustain the Examiner's rejection of claims 2 through 8, 10, 13 and 14 under 35 U.S.C. § 103.

In view of the foregoing, we sustain the Examiner's rejection of claims 1 and 9 under 35 U.S.C. § 102 and we sustain the Examiner's rejection of claims 2 through 8, 10, 13 and 14 under 35 U.S.C. § 103.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

LEE E. BARRETT)
Administrative Patent Judge)
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)
MICHAEL R. FLEMING) BOARD OF PATENT
Administrative Patent Judge) APPEALS AND
)
STUART S. LEVY) INTERFERENCES
Administrative Patent Judge)

MRF:pgc

Appeal No. 2002-1006
Application 09/132,351

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